

REMARKS

Applicants have now had an opportunity to carefully consider the Examiner's comments set forth in the Office Action of April 27, 2005.

Attached in Exhibits A are Rule 1.131 Declarations to establish an earlier completion of subject matter disclosed in this above referenced patent application.

One of the co-inventors, David R. Podnar, has not signed a Rule 1.131 Declaration because he cannot be located. Reasonable attempts have been made to contact Mr. Podnar at his last known address as indicated in the Declarations of Exhibit A. In conformance with MPEP §715.04, the Rule 1.131 Declarations are being submitted without Mr. Podnar's signature. However, it is to be understood that David R. Podnar is a co-inventor of the subject matter disclosed and claimed in the above referenced patent application.

Reconsideration of the Application is requested.

The Office Action

Claims 1-33 remain in this application.

Claims 1, 2, 4-14, 16-25 and 27-33 were rejected under 35 U.S.C. § 102(a) as being anticipated by Ash (Ash, Activity Scheduling in the Dynamic, Multi-Project Setting: Choosing Heuristics Through Deterministic Simulation, Proceedings of the 1999 Winter Simulation Conference, 1999, p. 937-941 [GOOGLE]).

Claims 3, 15 and 26 were rejected under 35 U.S.C. 103(a) as being unpatentable over Ash in view of Bowers et al. (Bowers et al., A Practical Application of a Multi-Project Scheduling Heuristic, Production and Inventory Management Journal, Fourth Quarter 1996, p. 19-25 [PROQUEST]).

Regarding Claims 1, 2, 4-14, 16-25 and 27-33, as being anticipated by Ash, attached in Exhibit A are declarations under 37 C.F.R. 1.131, signed by three of four of the Inventors corresponding to this patent application. The declarations establish that the subject matter of this patent application was completed prior to the publication of the Ash reference cited in the last office action.

Specifically, the declarations establish the patent application subject matter was completed prior to November 1, 1999 by all of the co-inventors. According to Exhibit B

which lists the Ash reference on page 18, and Exhibit C which indicated the 1999 Winter Simulation Conference was held on December 5-8, 1999, a prior completion date of November 1, 1999 by the Inventors of this patent application provided earlier completion to "swear behind" the Ash reference.

Accordingly, the Examiner is respectively requested to withdraw the rejection of claims 1, 2, 4-14, 16-25 and 27-33 as being anticipated by Ash.

Regarding claims 3, 15 and 26, these claims were rejected as being unpatentable over Ash in view of Bower et al. For the reasons discussed above with regard to claims 1, 2, 4-14, 16-25 and 27-33, the inventors have established an earlier completion date of their patent application subject matter, relative to the earliest publication date of the Ash reference.

Accordingly, the Examiner is respectively requested to withdraw the rejection of claims 3, 15 and 26 as being rejected as unpatentable over Ash in view of Bowers et al.

CONCLUSION

For the reasons detailed above, it is submitted all claims remaining in the application (Claims 1-33) are now in condition for allowance. The foregoing comments do not require unnecessary additional search or examination.

In the event the Examiner considers personal contact advantageous to the disposition of this case, he/she is hereby authorized to call Jeffrey N. Zahn, at Telephone Number (216) 861-5582.

Respectfully submitted,

FAY, SHARPE, FAGAN,
MINNICH & McKEE, LLP

9/27/2005
Date

J.N. Zahn
Patrick R. Roche, Reg. No. 29,580
Jeffrey N. Zahn, Reg. No. 54,864
1100 Superior Avenue, 7th Floor
Cleveland, Ohio 44114-2579
(216) 861-5582

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